

**Before the
Federal Communications Commission
Washington, DC**

In the matter of:)	
)	
Lumen Technologies, Inc., <i>Transferor</i>)	WC Docket No. 21-350
)	
and)	
)	
Connect Holding, LLC, <i>Transferee</i>)	
)	
Application for Consent to Transfer Control of)	
Domestic and International Section 214)	
Authorizations)	

**COMMENTS OF
COMMUNICATIONS WORKERS OF AMERICA**

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The Communications Workers of America (CWA) submits the following comments in response to the Federal Communications Commission’s (Commission) *Public Notice* regarding the applications filed to transfer control of domestic and international section 214 authorizations and wireless licenses from Lumen Technologies, Inc. (Lumen) to Connect Holding II LLC (“Connect Holding” or “Brightspeed”).¹

I. INTRODUCTION

CWA represents working people in telecommunications, customer service, media, airlines, health care, public service, education, and manufacturing. CWA represents 7,163 employees of Lumen and its subsidiaries nationwide, including 1,180 workers in 15 bargaining units located in the 20 states intended to be transferred to Connect Holding. CWA members at Lumen work as technicians and call center representatives, among other positions. CWA has an interest in Lumen’s restructuring as representatives of employees of Lumen, its subsidiaries, and workers in the telecommunications industry. Many CWA members are also customers of Lumen and have an interest in ensuring a financially-stable and robust company with quality service.

The proposed transfer control of domestic and international section 214 authorizations and wireless licenses from Lumen to Connect Holding could result in considerable harm to the public interest without strong commitments. The Commission should not approve the transaction without enforceable conditions on fiber investment, employment and plant retirement, and clarification on Connect Holding’s long-term plans.

¹ Lumen Technologies, Inc. and Connect Holding, LLC Application for Consent to Transfer Control of Domestic and International Section 214 Authorizations, WC Docket No. 21-350 (filed Sept. 1, 2021)[hereinafter Lead Application]; Lumen and Apollo announced on November 17, 2021 that the new company will be called Brightspeed. <https://www.prnewswire.com/news-releases/brightspeed-announces-brand-and-affirms-intention-to-bring-high-speed-internet-to-rural-and-suburban-communities-throughout-the-united-states-301426808.html>.

II. FCC STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

Pursuant to Sections 214(a) and 310(d) of the Communications Act, Applicants must demonstrate that the proposed reorganization will serve the public interest, convenience, and necessity.² After reviewing compliance with the Communications Act and other applicable statutes, the Commission considers whether the transaction would result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.³ The Commission also considers the impact of the transaction on the quality of communications services⁴ and whether the new entity will have the requisite financial, operational, and technical qualifications to invest in its operations, as well as deliver the public interest benefits that the Applicants claim the transaction will provide.⁵

III. CONNECT HOLDING PARENT APOLLO GLOBAL MANAGEMENT IS A PRIVATE EQUITY FIRM WITH A LIMITED TIME HORIZON FOR ITS INVESTMENTS, RAISING UNIQUE ISSUES THAT REQUIRE CAREFUL REVIEW AND CONDITIONS TO PROTECT THE PUBLIC INTEREST

Like most private equity firms, Apollo Global Management (“Apollo”) has a limited time horizon for its investments. Apollo’s voluntary Walker Guideline disclosure states that it “anticipates that the average holding period for its private equity investments will be three to five

² 47 U.S.C. §§ 214(a), 310(d).

³ See, e.g., Applications of Level 3 Communications, Inc. and CenturyLink Inc. for Consent to Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order, WC Docket No. 16-403 (rel. Oct. 30, 2017) ¶ 9; Applications of Deutsche Telekom AF, T-Mobile USA, Inc., and MetroPCS Communications Inc. for Consent to Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 12-301 (rel. March 12, 2013) ¶ 14.

⁴ See, e.g., T-Mobile/Metro PCS Order ¶ 15

⁵ 47 U.S.C. § 308(b); AT&T and BellSouth Corporation Application for Transfer of Control, Memorandum Opinion and Order, 22 FCC Rcd at 5756 ¶ 190 (2007); Ameritech, Corp. Transferor, and SBC Communications, Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14947-48 ¶ 568; see also 47 U.S.C. § 310(d).

years.”⁶ This short timeframe raises questions about the long-term stability and performance of the acquiring assets, as large-scale fiber deployment projects could take several years, from the planning stage to completion and delivery. To ensure the new company has a long-term commitment to serving its customers, the Commission should require Connect Holdings to disclose its investment plans for Brightspeed over a five-year and ten-year timeframe.

Apollo is also typical of private equity firms in seeking transaction terms and capital structure that maximally benefit itself, often at the expense of long-term stakeholders. In one recent example, Apollo co-led the consortium of private equity firms and mutual funds that dictated the terms of the 2016 takeover of Warrior Met Coal, which included a termination of Walter Energy’s collective bargaining agreement with the United Mine Workers of America, along with the company’s pension and health obligations to retired coal miners and dependents. While workers experienced deep cuts to pay and benefits, the private equity consortium profited. In the first year after it went public in 2017, Warrior Met distributed \$800 million in dividends, funded in part through debt, to its private equity owners and shareholders, of whom Apollo was one of the two largest. Yet by 2019, Apollo had sold its shares.⁷ Apollo has followed this playbook in many instances, using the tools of credit financing to exert control and extract profits from companies, often through reduction of worker compensation, job cuts, and other cost-cutting.⁸ Given this track record, the Commission should prohibit Connect Holding from using

⁶ Apollo Management International LLP, Walker Guidelines for Disclosure and Transparency in Private Equity (Nov. 30, 20210), <https://www.apollo.com/~media/Files/A/Apollo-V3/documents/disclosure/2020-ami-walker-disclosure-document>.

⁷ Senator Elizabeth Warren, press release, "Warren, Sanders, Baldwin Question Private Equity Firms Apollo and Blackstone, on Warrior Met Coal Amid Ongoing Worker Strikes," (Nov. 19, 2021), <https://www.warren.senate.gov/newsroom/press-releases/warren-sanders-baldwin-question-private-equity-firms-apollo-and-blackstone-on-warrior-met-coal-amid-ongoing-worker-strikes>.

⁸ See, e.g., The Saratogan, "Experts question safety of Momenive plant in Waterford," (Feb. 2, 2017), <https://www.bloomberg.com/news/features/2020-01-16/nobody-makes-money-like-apollo-s-ruthless-founder-leon-black>; <https://www.wsj.com/articles/casino-union-asks-caesars-to-block-apollo-tpg-votes-1461246795>;

the capital raised through this transaction or subsequent debt offerings to pay dividends to its owners for at least a three-year period.

The Commission has a mandate to review the competition impacts of transactions and should be attentive to evolving antitrust policy that seeks to address market power imbalances and unfair methods of competition.⁹ Competition regulators have recognized the need to look broadly at private equity acquirers in merger review in order to understand all funds related to the ultimate parent of the fund performing the acquisition. FTC Chair Lina Khan said in September 2021 that scrutiny of private equity involved mergers is needed because “these business models may distort ordinary incentives in ways that strip productive capacity and may facilitate unfair methods of competition and consumer protection violations.”¹⁰ Given the unprecedented nature of this transaction, in which a private equity firm proposes to take over incumbent local exchange carrier assets in a large swath of the country, the Commission should request information from the applicants that assures regulators of the new owners’ ability and intent to operate these assets in a responsible manner.

IV. THE COMMISSION SHOULD IMPOSE STRONG FIBER DEPLOYMENT REQUIREMENTS ON CONNECT HOLDING

The Applicants’ have not shown that the acquisition is in the public interest. Strong fiber deployment could address the risks to the acquiring assets caused by the new private equity owner’s potential extraction of wealth from the firm and externalization of the harms to the

https://www.saratogian.com/news/experts-question-safety-of-momentive-plant-in-waterford/article_407e0793-4101-5719-ba34-625d1c02f072.html.

⁹ See Memorandum Opinion and Order, In the Matter of Application of Verizon Communications Inc. and América Móvil, S.A.B. de C.V. For Consent To Transfer Control of International Section 214 Authorization, GN Docket No. 21-112, IBFS File No. ITC-T/C-20200930-00173, ¶ 25 (Adopted Nov. 19, 2021), <https://ecfsapi.fcc.gov/file/112206265931/FCC-21-121A1.pdf> (“We note that the Commission and the DOJ each has independent authority to examine the competitive impacts of proposed wireless mergers and transactions.”).

¹⁰ See Siri Bulusu, “Private Equity Firms Facing More Questions in FTC Merger Reviews,” Bloomberg Law (Jan. 13, 2022), <https://news.bloomberglaw.com/antitrust/private-equity-firms-facing-more-questions-in-ftc-merger-reviews>.

federal government by failing to deliver on promised deployments, through underemployment, or from a future bankruptcy.

a. Connect Holding’s description of its fiber investment plan for new company Brightspeed lacks specificity

Connect Holding has not proven the public interest benefits of the transaction. The Applicants’ application states that “consummation of the proposed transaction will provide substantial capital and managerial resources to expand availability of symmetrical gigabit FTTP broadband in that service area.”¹¹ The Applicants also state that because the percentage of rural households in the Acquired LECs’ is more than double the distribution in the U.S. as a whole, “the planned fiber upgrade will include a substantial number of these rural areas.”¹²

These promises are imprecise and do not meet the burden of proving the public interest benefits of the transaction. They lack numerical or geographical specificity on the projected fiber to the premise (“FTTP”) deployments post-transaction, as well as the rate of expected FTTP deployments compared to what Lumen has internally projected if the transaction does not go through. The recently passed Infrastructure Investment and Jobs Act and the American Rescue Plan Act of 2021 have made billions of dollars in federal broadband subsidies available to areas in Lumen’s footprint. Therefore, it is not unreasonable to expect that a standalone Lumen entity would strongly attempt to qualify for such subsidies in order to upgrade many parts of its footprint. Connect Holding’s vague promises of fiber deployments, in and of itself, are not sufficient to establish the public interest benefits of the transaction. The Commission should collect information through a data request from the Applicants and analyze internal FTTP

¹¹ Lead Application, Exh. 1 at 3.

¹² *Id.*

deployment projections and Lumen’s projected deployments as a standalone company, and impose strong minimum FTTP deployment requirements in any approval order.

b. Connect Holding’s five-year fiber deployment plan should include enforceable interim timelines, including potential penalties

Considering the repeated delays by CenturyLink in its CAF II deployments, CWA urges the Commission to impose enforceable interim deployment timelines on Connect Holding.

CenturyLink accepted \$514 million annually under CAF II to deploy broadband in 23 states.

However, as of January 2022, CenturyLink had failed to meet the 2020 year-end interim milestones for over 56 percent of the states (13 of the 23 states) for which it received funding.¹³

This was the second such delay by CenturyLink.

The Commission has previously approved interim deployment requirements and voluntary penalties in similar transactions. For example, the T-Mobile-Sprint merger approval order imposed three-year and six-year national and rural 5G network buildout requirements, in-home broadband commitments, and a series of penalty payments to the U.S. Treasury for failing to meet the deadlines.¹⁴ Considering Apollo’s short-term investment horizon, and Lumen’s

¹³ See Telecompetitor, “Frontier, CenturyLink Again May Have Missed CAF II Deadlines for Rural Broadband Buildouts,” (Jan. 19, 2021), <https://www.telecompetitor.com/frontier-centurylink-again-may-have-missed-caf-ii-deadlines-for-rural-broadband-buildouts/>. See also Letter from Jeffrey S. Lanning to Marlene H. Dortch, In the Matter of Connect America Fund; WC Docket No. 10-90 (Jan. 15, 2021).

¹⁴ See Memorandum Opinion and Order, In the Matter of Applications of T-Mobile US, Inc., and Sprint Corporation For Consent To Transfer Control of Licenses and Authorization, WT Docket No. 18-197, at 13 (released Nov. 5, 2019) (“If the Applicants miss any of the specific three-year goals with respect to their nationwide 5G deployment, they committed to make a payment to the U.S. Treasury of at least \$10 million, with a maximum payment of \$250 million, depending on the amount by which they miss the goal. The same verification structure and payment scheme applies separately to their commitment to deploy 5G service to rural America. If the Applicants fail to meet their commitments with respect to both the nationwide deployment and the rural deployment of 5G service, they pledged to make a payment of at least \$20 million, with a maximum of \$500 million. The Applicants committed to making even larger payments if they miss their commitments for deploying 5G service after six years. In that case, they would make payments of \$10 million for each percent by which they miss their nationwide 5G build-out commitment and of \$20 million for each percent by which they miss their rural build-out commitment, with a minimum payment of \$25 million for the nationwide 5G commitments, and \$50 million for the rural 5G commitments, leading to a maximum payment of \$2.4 billion. Finally, making a contribution to the U.S. Treasury because they missed meeting their the 6-year commitments does not release the Applicants from meeting those

frequent failures to meet deployment deadlines, in over half of the states, despite receiving over a half of a billion dollars annually in broadband subsidies to deploy broadband in 23 states, the Commission should not approve the transaction without specific deployment commitments, including potential penalties on Apollo.

c. The Commission should ensure equitable fiber deployment

Connect Holding should explain how it is planning to develop an equitable fiber investment plan for the acquiring assets. A 2021 report by CWA and the National Digital Inclusion Alliance found widespread disparities in Lumen fiber investment decisions.¹⁵ The report, in analyzing data submitted by Lumen to the FCC as part of its mandatory semiannual Form 477 reports, found Lumen underdelivering, including:

- Thirty-nine percent of households in Lumen’s footprint do not have access to speeds that meet the FCC’s definition of broadband.
- Fifty-two percent of households in predominantly rural counties do not have access to internet access that meets the FCC definition of broadband, compared to 36 percent in predominantly urban counties.
- The median income for households with fiber available is 12 percent higher than in areas with DSL (Digital Subscriber Line) service only. The median income of households with access to fiber is \$62,649, while the median income of households with only access to DSL is \$56,123.
- Lumen targets wealthy areas for investment – 42 percent of households with access to fiber are in census blocks with median incomes above \$75,000 – while leaving behind lower-income areas, with only seven percent of Lumen’s fiber network in census blocks with median incomes below \$35,000.
- In counties with higher populations of Native Americans (more than 25% of households), only about 5.2 percent have access to fiber-to-the-home service and 50 percent only have DSL access.¹⁶

commitments. The commitments remain in place and further contributions will be assessed a year following a missed commitment on a recurring basis until each element of each commitment is met.”).

¹⁵ Communications Workers of America and the National Digital Inclusion Alliance, Lumen’s Digital Disparity: Underinvestment in Infrastructure Discriminates Against Lower-Income, Rural, and Native American Customers (June 2021), https://cwa-union.org/sites/default/files/20210624_lumen_report.pdf.

¹⁶ *Id.* at 1-4.

While the Applicants' plans for additional fiber deployments are positive, those are just words. Given Lumen's shirking what it promised to do, the the Commission cannot approve the transaction without specific commitments from Connect Holdings to carry out fiber deployment upgrades in an equitable manner.

d. The Commission should require Brightspeed to participate in state and federal affordable broadband offering programs

The Commission should require Brightspeed to participate in federal and state affordable voice and broadband programs, including the Lifeline and Affordable Connectivity Program, and to apply for Eligible Telecommunications Carrier certification where needed. This is particularly important as the company continues to receive substantial public subsidies for broadband deployment. The Commission in the past has requested, or the parties have offered, objective, verifiable commitments designed specifically to ensure that the benefits of a merger transaction extend to low-income residential customers throughout all of the merging parties' regions.¹⁷

¹⁷ See, e.g., Closing Statement of FCC Comm'r Mignon L. Clyburn Washington, DC, 2018 WL 3046986, at *1 (OHMSV June 6, 2018) ("Historically, a Lifeline phone was the backstop connection for millions of low-income households, but we have also made strides in bringing affordable broadband connectivity through merger commitments and updates to the Lifeline program."); Domestic Section 214 Application Filed for the Acquisition of Certain Assets of Budget Prepay, Inc. d/b/a Budget Phone by Glob. Connection Inc. of Am. Streamlined Pleading Cycle Established, 30 F.C.C. Rcd. 11727 (2015) (merging parties noting that a significant number of customers receive Lifeline services through Budget, and that, "post-close, they will continue to receive these benefits through GCOIA at the same rates, terms, and conditions as prior to the transaction"); In the Matter of Applications of Cricket License Co., LLC, et al., Leap Wireless Int'l, Inc., & AT&T Inc. for Consent to Transfer Control of Authorizations Application of Cricket License Co., LLC & Leap Licenseco Inc. for Consent to Assignment of Authorization, 29 F.C.C. Rcd. 2735, 2736 (2014) (AT&T committing to offer specific rate plans targeted to help value-conscious and Lifeline customers); In Re Application of GTE Corp., 15 F.C.C. Rcd. 14032, 14184–86 (2000) (requiring Bell Atlantic/GTE, among other things, to (i) offer a low-income Lifeline universal service plan modeled after the Ohio Universal Service Assistance (USA) Lifeline plan that Ameritech and Ohio community groups negotiated in 1994 and incorporating elements from the December 1998 Ohio Commission Order addressing the Ohio USA plan, including providing "a discount equal to the price of basic residential measured rate service, excluding local usage, in each state, up to a maximum discount of \$10.20 per month (including all federal, state and company contributions);" (ii) permit a Lifeline customer with past-due bills for local service to restore local service after payment of no more than \$25 and an agreement to repay the balance of local charges in six equal monthly payments; (iii) not requiring Lifeline customers to pay a deposit for toll service if they elect toll restriction service, (iv) allow easier means for prospective Lifeline customers to verify their eligibility and subscribe to the Lifeline program, (iv) "publicize the program in each state with an annual promotional budget that is proportional to the annual promotional budget in Ohio;" and (v) automatically upgrade current Lifeline customers to the merging parties' new programs where it is evident that doing so will unambiguously improve the customer's situation); In the Matter of

e. Fixed wireless is not a substitute for wired broadband

The Applicants states that “Apollo will also explore the use of alternatives to copper for broadband where available, including fixed wireless.”¹⁸ The Commission should encourage innovative approaches to broadband deployment. However, not all broadband technologies are created equal and fiber technology remains far superior to fixed wireless. Fixed wireless may make sense in truly remote regions where it is geographically impossible or extremely costly to deploy fiber. However, fixed wireless deployments should not get equal weight in any Commission-mandated deployment requirements. Furthermore, Connect Holding should be required to provide a detailed explanation and financial analysis for why fixed broadband is not a feasible approach in the geographic areas it seeks to provide fixed wireless.

V. CONNECT HOLDING SHOULD COMMIT TO AN ENFORCEABLE SERVICE QUALITY IMPROVEMENT PLAN FOR ACQUIRING ASSETS

CWA, as part of its ongoing obligation to its members, has frequently investigated the conditions of CenturyLink’s plants and equipment. CWA’s investigation and interviews with members have revealed that Lumen has failed to maintain its physical copper plant.

Much of Lumen’s divesting assets still relies on the same copper cables that were installed in the 1980s. As technology changed, Lumen and its predecessors failed to keep up with technological changes and invest in next-generation fiber networks. While CWA welcomes

Applications Filed by Qwest Commc'ns Int'l Inc. & CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control, 26 F.C.C. Rcd. 4194, 4211 (2011) (Commission accepting the commitments of CenturyLink to, inter alia, make discounted broadband Internet access service available to households that qualify for Lifeline service and meet certain other eligibility criteria and offer discounted computer equipment to these customers and making the commitments binding and enforceable conditions of its approval); FCC Approves SBC-Ameritech Merger Subject to Competition-Enhancing Conditions, 15 F.C.C. Rcd. 8652 (1999) (imposing conditions on merging parties to, inter alia, offer enhanced Lifeline plans, including offering a low-income Lifeline universal service plan to low-income residential subscribers in each of its states); In the Matter of Applications for Consent to the Transfer of Control of Licenses & Section 214 Authorizations from S. New England Telecommunications Corp., Transferor to SBC Commc'ns, Inc., Transferee, 13 F.C.C. Rcd. 21292 (1998) (noting that among the conditions imposed involved the promotion of Lifeline service).

¹⁸ Lead Application, Exh. 1 at 11.

Apollo's decision to transition acquiring assets to next-generation fiber networks in many parts of the footprint being acquired, one must put this promise in context with Apollo's average holding period for its private equity investments of three to five years. Thus, the FCC should be apprehensive that the deployment will not be done rapidly or equitably among its residential customers that continue to rely on the same old copper cables for voice service, including 911 emergency service. The universe of customers who continue to rely on Lumen's landline services includes precisely the customers who lack reasonably comparable substitutes, perhaps because they live in less profitable and/or the most remote or marginalized neighborhoods of the wire center service area. Nor are they the kinds of customers who will deliver significant profits to a private equity firm.

Consequently, the Commission must ensure that Connect Holding does not abandon these customers, especially in light of the short investment horizon of a private equity owner looking to maximize returns by investing in the most profitable assets and jettisoning others. Connect Holding should be required to set in place a comprehensive service quality improvement plan for areas that are not being transitioned to fiber in a timely fashion and commit to meet state service quality standards where applicable. Furthermore, as part of any plan, Connect Holding should set aside sufficient copper maintenance budgets, including funds dedicated to preventative maintenance, and hiring of adequate staffing needed to address issues on a timely basis.

VI. THE COMMISSION SHOULD DISALLOW COPPER RETIREMENT BY THE CONNECT HOLDING WITHOUT THE PRESENCE OF A WIRELINE ALTERNATIVE

On July 14, 2021, Lumen filed a Section 214 application to discontinue legacy voice service on Little Gasparilla Island, Florida.¹⁹ Lumen's application presented novel questions of law and policy, as there is no other wireline provider on the Little Gasparilla Island and Lumen sought to rely on mobile wireless networks as adequate substitutes to discontinue wireline voice service. On October 28, 2021, Public Knowledge, Benton Institute for Internet & Society, Center for Rural Strategies, Common Sense Media, CWA, INCOMPAS, and Media Alliance filed a petition for an extension of the comment period.²⁰ On November 22, 2021, Lumen withdrew its Section 214 application without explanation.²¹ Wireless is not a comparable substitute for wireline as it remains less reliable, affected by terrain, weather, distance to the tower, spectrum limitations, and user demand.²² The Commission should not approve the transaction without commitments by Connect Holding to not retire its copper plant in areas without a wireline alternative.

¹⁹ See In the Matter of Section 63.71 Application of Embarq Florida, Inc. d/b/a CenturyLink, a Lumen Company For Authority Pursuant to Section 214 of the Communications Act of 1934, As Amended, to Discontinue a Telecommunications Service, WC Docket No. 21-298 Comp. Pol. File No. 1710 (Jul. 14, 2021).

²⁰ See Public Knowledge, Benton Institute for Internet & Society, Center for Rural Strategies, Common Sense Media, Communications Workers of America, INCOMPAS, and Media Alliance Request for Extension of Time to File Comments, In the Matter of Section 63.71 Application of Embarq Florida, Inc. d/b/a CenturyLink, a Lumen Company For Authority Pursuant to Section 214 of the Communications Act of 1934, As Amended, to Discontinue a Telecommunications Service, WC Docket No. 21-298 Comp. Pol. File No. 1710 (Oct. 18, 2021).

²¹ See Letter from Craig J. Brown to Marlene H. Dortch, Section 214 Application of Embarq Florida, Inc. d/b/a CenturyLink to Discontinue Legacy Voice Service as Part of a Technology Transition, WC Docket No. 21-298; Comp. Pol. File No. 1710 (Nov. 22, 2021).

²² See Joanne Hovis, Ryland Sherman, Marc Schulhof, "The Era of the Broadband Public-Private Partnership: New Trends and Opportunities in the Wake of COVID-19", CTC Technology and Energy and Benton Institute for Broadband and Society, at 26-27 (Nov. 21), <https://www.benton.org/sites/default/files/eraofbbppp.pdf>.

VII. THE COMMISSION SHOULD NOT APPROVE THE PROPOSED TRANSACTION WITHOUT STRONG, VERIFIABLE COMMITMENTS FROM THE APPLICANTS TO PRESERVE U.S. EMPLOYMENT AND RESPECT WORKERS' RIGHTS

The Commission has a history of evaluating labor market issues in analyzing whether transactions are in the public interest.²³ With an increased concentration in many labor markets, the federal antitrust agencies, consistent with President Biden's executive order,²⁴ are actively looking at labor issues in transactions, including a recent merger challenge in the book publishing industry.²⁵ The Federal Trade Commission is scrutinizing proposed transactions on their impact on noncompete agreements and employee competition, as well as unionization and executive compensation.²⁶ The FTC and DOJ recently held a public workshop to discuss efforts to promote competitive labor markets and worker mobility.²⁷

The degradation of Lumen's infrastructure is closely correlated with the decline in the number of trained, career employees in the field. According to CWA's analysis, the number of CWA-represented employees at Lumen has declined by 50 percent over five years, from 14,332

²³ See, e.g., Verizon-Tracfone Order at 103-109 ("The transaction likely will have limited impacts on telecommunications workers in the United States. Consequently, we decline to impose any additional job-related conditions to our approval of the transaction.")

²⁴ See The White House, "Executive Order on Promoting Competition in the American Economy", (July 9, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy> (affirming the Biden Administration's policy "to enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony — especially as these issues arise in labor markets . . .").

²⁵ See Press release, "Justice Department Sues to Block Penguin Random House's Acquisition of Rival Publisher Simon & Schuster", Department of Justice (Nov. 2, 2021), <https://www.justice.gov/opa/pr/justice-department-sues-block-penguin-random-house-s-acquisition-rival-publisher-simon>.

²⁶ See Siri Bulusu, "Private Equity Firms Facing More Questions in FTC Merger Reviews," Bloomberg Law (Jan. 13, 2022), <https://news.bloomberglaw.com/antitrust/private-equity-firms-facing-more-questions-in-ftc-merger-reviews> ("The FTC increasingly is asking merging parties and the private equity funds that own them about how the proposed deal could affect noncompete agreements and employee competition, as well as unionization and executive compensation—issues that weren't traditionally the focus of merger reviews, according to Gilman and another attorney, who each faced some of these questions.").

²⁷ See Federal Trade Commission, "FTC and DOJ to Hold Virtual Public Workshop Exploring Competition in Labor Markets," (Oct. 27, 2021), <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-doj-hold-virtual-public-workshop-exploring-competition-labor>.

in 2017 to 7,163 in 2021. In the states being acquired by Apollo, the number of CWA-represented workers dropped from 1,757 in 2017 to 1,156 today.

Even as Lumen received extensive government support for deployment in recent years, it outsourced much of that work to non-union, lower-wage contractors. From 2015 to 2021, Lumen received \$506 million per year from the FCC’s Connect America Fund to build broadband to unserved areas.²⁸ Lumen hired contractors to complete most of the construction, even as it continues to eliminate union-represented jobs. In 2021, Lumen won \$262 million over ten years in the FCC’s Rural Digital Opportunity Fund reverse auction to build fiber to the home in underserved areas, but does not maintain an adequate in-house workforce to carry out this deployment.²⁹ This is especially problematic when Lumen collects from the government with one hand and extracts money out of its workers’ pocket with its other hand.

The Commission should not approve the transaction without verifiable and enforceable commitments by Connect Holding to ensure that the transaction does not cause a reduction in U.S. employment, that no employees of Lumen in the 20 state ILEC operations being transferred to the new entity Brightspeed will lose their jobs as a result of this transaction, and that the Applicants commit to abide by all labor and employment laws and to maintain neutrality in allowing their employees to form a union of their own choosing, free from any interference by the employer. These actions are aligned with the President’s executive order to promote competition and complement the President’s call for Congress to pass the Protecting the Right to

²⁸ See Linda Hardesty, “CenturyLink scored billions in CAF II funds, eyes the next giveaway: RDOF”, FierceTelecom (Jan. 27, 2020), <https://www.fiercetelecom.com/operators/centurylink-scored-billions-caf-ii-fundseyes-next-giveaway-rbof>.

²⁹ See Mike Robuck, “Lumen execs: Fiber builds a bigger bang for the buck than RDOF”, FierceTelecom (Feb. 11, 2021), <https://www.fiercetelecom.com/telecom/lumen-execs-fiber-builds-a-bigger-bang-for-buckthan-rdof>.

Organize (PRO) Act to ensure workers have a free and fair choice to join a union and to collectively bargain.³⁰

VIII. CONCLUSION

Many Americans continue to work, study, socialize, and shop at home. Internet access is critical to meaningfully participate in society and our democracy. But despite the long-standing Congressional goal of universal service, millions of low-income American households still lack broadband service.³¹ Competition alone will not ensure that all Brightspeed residential and business customers will have access to quality basic local exchange and broadband services.

Lumen has benefitted from years of government support. In exchange for the billions of dollars it received from the federal government, it made promises that it did not keep. Instead of providing broadband to everyone, it focused on the wealthy. Rather than investing in its infrastructure, plants, and workers, it sought cheap labor. Given the unprecedented foray of a private equity firm into ownership of ILEC assets across 20 States, and the billions in further government subsidies on the table for infrastructure development, the Commission should not approve the transaction without meaningful, enforceable conditions on fiber investment, service

³⁰ See The White House, “FACT SHEET: Executive Order on Promoting Competition in the American Economy”, (July 9, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy> (noting how the Executive Order complements “the President’s call for Congress to pass the Protecting the Right to Organize (PRO) Act to ensure workers have a free and fair choice to join a union and to collectively bargain. Unions are critical to empowering workers to bargain with their employers for better jobs and to creating an economy that works for everyone.”).

³¹ Monica Anderson & Madhumitha Kumar, “Digital Divide Persists Even As Lower-Income Americans Make Gains In Tech Adoption,” *Pew Research Center* (May 7, 2019), <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption> (“Roughly three-in-ten adults with household incomes below \$30,000 a year (29%) don’t own a smartphone. More than four-in-ten don’t have home broadband services (44%) or a traditional computer (46%).”).

quality improvements, employment and plant retirement, and clarification on Connect Holding's long-term plans.

Sincerely,

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